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Approved For Release 2005/01/10 : CIA-RDP84-00499R000500110012-7
RESPONSIBILITY AND AUTHORITY IN CLANDESTINE INTELLIGENCE/
ARMY ESPIONAGE ACTIVITIES

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OSO File 100-7-48

I

For several years the struggle for control over US clandestine intelligence between JCS/Army and CIA was a waiting game in which both sides expected time to play into their hands. CIA believed that demobilization from the World War II military machine would starve the Army out of the espionage business. The JCS/ rode the opposite trend, mobilization for cold war, to put the Army back in the espionage business legally as well as in fact. The CIA aim, which it had neither the stature nor the capabilities to force through rapidly, was to bring into full effect the control over espionage and counter-espionage provided in its charter. This was expressed during the CIG period by NIADir #5, 8 July '46, which placed under the DCI the "conduct of all organized Federal espionage and counterespionage operations outside the US and its possessions for the collection of foreign intelligence information required for the national security." It was expressed for the CIA period by NSCID #5, 12 December '47, which stated that the DCI would conduct all organized espionage and counterespionage activities outside the US "except for certain agreed activities by other Departments and Agencies," and added that in the case of casual agents utilized by other IAC agencies, the DCI would "coordinate such activity with organized covert activities." The reverse trend, toward an increase of authority over CIA by the Military Services, gained its first urgency not as applied to covert intelligence, but to covert operations. Its origin may be placed in January 1948, when CIA was nominated as the agency to conduct covert operations and OPC was established as the office therefor. It achieved formal enunciation on 1 July '49, with the Statement in NSC #50 that "it may be determined that certain functions and responsibilities of CIA should be under the control of the military in time of war."

II

During the war the Army had developed espionage activities, primarily under the direction of Alfred MacCormack, which had proved of value and had survived into the post-war period as a valuable potential asset. In fact, after he transferred to the State Department, and when he was promoting a plan which would have given the State Department primary control over espionage activities, these continuing Army wartime activities were a significant consideration. When Vandenberg forced the issue and NIADir #5 assigned all such espionage activities to CIG, the Army was by no means psychologically prepared to entrust such assets-in-being to the new and untried agency. Once formal Government doctrine outlawed the continuation of these activities by the Army, the Army's reaction was to withdraw them from the list of items under negotiation and discussion, and to continue the conduct of espionage privately and unadmittedly. On the one hand, the fact that such activities are clandestine by their very definition

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made it easier to continue them without acknowledgment, and on the other hand, the fact that CIG was new, untried, and by its very nature a threat to the vested interests of the older agencies and services made those services the less willing to entrust CIG with activities of importance and consequence.

Espionage activities were also conducted during the war and thereafter by the US Armed Forces in the Far East, but such activities did not enter into the early thinking in the adjustment of responsibilities between the Army and CIG, because MacArthur was so successful in avoiding direction and control by the US Government that the Army had neither knowledge nor effective responsibility for arrangements made under his command. The existence of such espionage activities became a matter specified in the formal record at a much later date, [REDACTED]

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III

The first consideration of Army espionage activities in connection with the overall question of who should conduct espionage abroad, came in the deliberations of the committee established by CIGDir #3, 21 March '46. This committee followed the Fortier Committee, created by CIGDir #1, one month earlier, to study and report on SSU assets. CIGDir #3 called for a broad survey of all clandestine facilities throughout the government by the Central Planning Staff of CIG, and Colonel Harry Cunningham, Air Force, was named to head the committee, membership on which was broadened to include the FBI. It should be borne in mind that at this time coordination rather than operations of its own was the predominant concept of the CIG mission, and personnel on the Central Planning Staff were regarded as representatives of their parent agency, speaking at least equally for that agency as for CIG. According to the recollection of Colonel Roy H. Boberg, also Air Force and also a member of the committee, two Army Colonels appeared to testify before that committee. Various members questioned them rather closely on Army espionage activities, and the witnesses stated that they were not at liberty to discuss or reveal such matters. Finally they stated that certain sensitive information had been disclosed to Colonel Cunningham privately. Colonel Cunningham confirmed this statement, stated that he did not think the information was suitable for disclosure to the other members of the committee, and when pressed, refused to reveal it. Colonel Boberg further recollects that the only minutes made by this committee were notes taken and held by Colonel Cunningham personally. No final report of the committee is in the record.

The formal record of this period carries the inference that Army espionage activities were turned over to CIG at the time CIG absorbed

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the remains of SSU in October, 1946. Early that year Major General Leroy Irwin was appointed Interim Activities Director by the War Department, with authority both over SSU and G-2 espionage activities. His mission^W was to integrate all such activities under War Department jurisdiction at that time, in preparation for assignment of the espionage function to some other agency in the Government, the specific agency at that time being not yet determined. Within SSU, the reorganization that established the FSRO was carried out in preparation for reassignment of SSU, but no Army activities external to SSU were brought into it.

IV

Until 1948, the military posture of the US was subsiding from the recent war and the Armed Services were short of both funds and manpower. In such an era CIA could afford to bide its time and stand ready to take over espionage activities from the Army as these were threatened with starvation and the Army found itself unable to support them any longer. But during 1948 this tide turned, and there occurred the beginning of build-up of the US military posture against a threatened future emergency. In CIA's relations with the Military, this turn did not first appear as leading toward a curtailment of CIA authority in clandestine intelligence collection abroad. Indeed, the first shift from a peacetime to a cold-war psychology involving CIA was the creation of OPC in January, 1948. In its original charter, OPC was charged with coordinating with and taking guidance from the Joint Chiefs of Staff, and it was specified that in wartime, in war theaters, OPC activities would be under the command of the theater commander. However, it was not until 3 November '49, that the Joint Subsidiary Plans Division was created by JCS 1735/32, as an agency of the JCS and as the channel for coordinating support of OPC by the Military Services and for maintaining continuous direction and guidance of OPC-type activities and planning.

By that time another agency of the JCS, the Joint Intelligence Committee, was already concerned with the idea that the covert intelligence should be under JCS and theater command in wartime in the same manner as covert operations. This was based on a fundamental difference in concept of the function and nature of clandestine intelligence, but this difference was apparently not recognized in the DCI's office at the time. It might be described as the tactical concept of clandestine intelligence as distinguished from the strategic. For the JIC position, as it evolved, viewed espionage as an activity related to the theater in which it was carried on and to the war crisis of the moment. Both the legislative and executive intent, in the creation of CIA, was born in the desire to prevent the possibility of another Pearl Harbor for all future time. From this it follows that espionage must be a permanent undertaking, unchanged by the rise and fall of international tensions, delving at all times into the symptoms of remote as well as immediate world forces.

CIA's point of contact on this question in late 1949 was through the Interdepartmental Co-ordinating Staff, then headed by

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Prescott Childs. The implications were lost, not only on ICAPS, but on the DCI according to Childs' testimony. For on 16 November '49, he addressed a memorandum to [] including an exhaustive review and documentation of the question of military control of CIA in military theaters in wartime. He stated that this prospect was neither surprising or objectionable to the DCI, and the DCI's only concern was over what would happen to the odd bits of CIA operational activity which would not be taken over by the military. Internal evidence would not indicate close coordination between ICAPS and OSO at this time, for the concept of inheritance of Army espionage activities by attrition continued to prevail in OSO for some time after the JCS were moving in a quite opposite direction.

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On 8 February '50, Richard Helms prepared a memorandum for OSO, the theme of which was that the time was now ripe for CIA to take over Army espionage activities that had continued in certain occupied territories since the close of the war. He pointed out that the scale of Army activities immediately after the war had resulted in the output of considerable clandestine intelligence in the fields of politics, strategic and tactical information on territories adjacent to, but outside of, the occupied areas, and scientific information. He then outlined a seven-point schedule of OSO intentions:

a. Assume full control of counterespionage cases of national significance run by local commands and take over files of past cases of this nature.

b. Obtain information results (access to or copies of files) of counterespionage operations conducted by local commands for command security purposes.

c. Obtain full operational information on positive espionage operations conducted by local commands beyond the requirements of command security.

d. Assess the value and security of such operations and determine the desirability of either assuming control or advising the local command to continue or discontinue.

e. Assume full control of positive espionage operations which the Department of the Army, the local command, and CIA agree are of national significance and which the SO station can conduct securely and with prospect of success.

f. Increase field station budgets as required to carry this additional work load.

g. Arrange with the Army for turnover of all locally accumulated biographical files at the time military forces withdraw from an occupied area.

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Also in February, 1950, the JIC consulted with ADSO and members of his staff on the subject of the wartime status of CIA, and during the next six months a series of drafts for new NSC directives on the subject were proposed. These were essentially the same, and consisted of new paragraphs 7, 8, 9, and 10 to be added to NSCID #5. The tenth paragraph specified that plans for covert intelligence would be coordinated with the JCS, and operations of covert intelligence in theaters of war would be controlled by the JCS, in time of war, national emergency or when the President so directed. Such a draft was submitted by the JIC to the JCS on 19 May '50, and the JCS submitted it to Staff A, OSO, on 24 May, at which time the Chief, Staff A, James Angleton, stated that it already had the approval of the DCI. Another such draft was formalized as JIC 445/1 on 12 July '50, a copy of which was obtained unofficially by [] and transmitted to OSO on 28 July '50. At that time [] stated the subject paper had not yet been referred to CIA, and it was desirable to arrive at a CIA position on it in anticipation of such formal referral.

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Up to this point, and for a period of nearly six months, there had been repeated statements that the JIC and JCS view was entirely acceptable to the DCI. It is at least possible that CIA may have appeared capricious, inconsistent, and uncoordinated to the JCS when, immediately thereafter, the CIA position became one of complete rejection of the JCS position. This reversal of the CIA position could be explained and justified two months later, by the circumstance of a change in directors of CIA, but the reversal was formally recorded on 4 August '50, in a memorandum by the then DCI, Admiral Hillenkoetter, based on material prepared by the General Counsel, Lawrence Houston. The basis of the position then taken was that the DCI was by statute responsible to the NSC and not to the JCS, and that his responsibility could not be assumed and fulfilled if he were placed under the authority of a subordinate agency.

VI

Up to this point covert operations, under NSC 10/2, and covert intelligence, under NSCID 5, had been dealt with separately, even while the prescriptions for their control and channels of authority were drawing together. The JCS sought, by separate documents, to duplicate the terminology applying to covert operation in NSC 10/2, unchallenged for two years, by amendment of NSCID #5, applying to espionage and counterespionage. In December, 1950, the new DCI, General Smith, added new weight to the idea that similar treatment was appropriate for both covert intelligent and covert operations. While the JCS sought to obtain as much control over covert intelligence as they had over covert operations, the DCI sought quite oppositely to reduce their control over covert operations. At his request, NSC Action #400, 14 December, 1950, suspended paragraph 4 of NSC #10/2, which set forth the principle of JCS control over covert operations in theaters of

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war in wartime, until such time as a substitute text could be agreed on.

On 8 January '51, the DCI followed this up by submitting a substitute text to the NSC, stating that this proposed text had been prepared in consultation with Rear Admiral Leslie Stevens for the JCS, General Magruder for OSD, and Robert Joyce for the State Department. This text, combining the subject matter of NSC #10/2 and NSCID #5, stated that the DCI would be responsible in wartime for covert operations and clandestine intelligence, that he would coordinate with the JCS and other non-military departments and agencies, that in theaters of war such activities would be within the responsibility of the theater commander and the DCI would assign a senior representative on the staff of the theater commander to assist in the direction and command of such operations, that CIA would maintain independent communications between its stations in theaters of war, and that the JCS would provide continuous guidance and support in such activities.

Now the issue was squarely joined. If the military services were not to control espionage in theaters of operations, they would lose the expected charter by which their holdover espionage activities from World War II would be belatedly legitimatized. There followed a confused period in which the question of whether covert operations (OPC) and covert intelligence (OCI) should be treated together or separately was debated along with the principal issue of the extent of JCS control over CIA operations. OSO literally did not know under what authority and directions they were operating from day to day. On 23 April '51, Helms disseminated a memorandum within the office stating that Lyman Kirkpatrick, then in the office of the DCI, had stated orally that day that the NSC had approved the rewording of paragraph 4 of NSC #10/2 and had disapproved NSC #10/3, which would have treated OPC and OSO activities together, wherefore "NSCID #5 is still in force for SO and the DCI will stand on NSCID #5 for the predictable future." The approved reworded paragraph was given as follows:

"In time of war or when the President directs /omitting the term 'national emergency' plans for covert operations will be coordinated with the JCS. In active theaters, covert operations will be under the direct command of the American Theater Commander, and orders therefor will be transmitted through the JCS."

VII

The JCS next effort was to obtain specific authorization of the Military Services to conduct espionage operations and a revision of NSCID #5, to this end, was forwarded to the Secretary of Defense over the signature of Admiral Forrest Sherman on 18 May '51. The cover memorandum characterized the existing version of NSCID #5 as a peacetime measure, inadequate under existing world conditions, and stated that the overriding need, which had not been met, was for a "well-integrated and effective clandestine collection system." The draft itself provided authority for the Military Services to conduct espionage

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age operations, created a separation between the functions of espionage and counterespionage, and in certain respects substituted the JCS and the IAC for the NSC as the directing authority over the DCI. This draft was sent to the DCI by the Secretary of Defense, with the request that it be coordinated through the IAB. However, the DCI returned it with the explanation that it was unacceptable to him, wherefore there was nothing to be gained by submitting it to interagency coordination. This explanation pointed out that the JCS proposal disregarded the intent of Congress in establishing CIA and ignored the fact that the DCI was responsible to the NSC and to the President, a fact reaffirmed by "recent hand-written comments of the President" in connection with the JCS proposed revision of NSC #10/2. The DCI added that when he had assumed office he had found a number of other Government departments operating "spy nets", one or two of which had been voluntarily transferred to CIA, while others remained. This again shifted the tactical situation of CIA in the controversy from the defense to the attack, and redirected attention to the five-year-old unresolved problem of Army espionage operations.

VIII

The issue of NSC control over CIA's collection of clandestine intelligence was resolved on 28 August '51, when the NSC issued its revision of NSCID #5. A draft filed in OSO under date of 18 July '51, which may be the final form of this revision, provides, in the form of additional paragraphs to the previous version of the directive:

7. In occupied areas, the representative of the DCI will coordinate espionage and counterespionage with the Senior US Representative.

8. In areas other than theaters of operations or occupation, the representative of the DCI will keep the Senior US Representative appropriately advised in general of espionage and counterespionage.

9. When CIA requires Service support for espionage and counterespionage, such support as is authorized by the Department of Defense will be planned jointly by the JCS.

10. In war or when the President directs, the DCI will coordinate espionage and counterespionage in or from a theater of active military operations with the JCS. In active theaters of war, where American forces are engaged, representatives of the DCI conducting espionage and counterespionage operations in or from the theater shall be under the direct command of the theater commander.

IX

There remained only the question of the disposition of existing Army espionage activities. Working-level exchange of ideas may be perceived. Approved For Release 2005/01/10 : CIA-RDP84-00499R000500110012-7

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dated, in draft form, 23 November '51, and titled "Establishment of 'Agreed Activities' by the Department of the Army Under the Provisions of NSCID #5." In digest it stated:

NSCID #5 placed the conduct of espionage and counterespionage in CIA "except for certain agreed activities by other Departments and Agencies." Through necessity and with the tacit approval of CIA, Army intelligence elements within overseas command areas have been conducting espionage operations to varying degrees since the end of World War II. The Army possesses espionage assets which should be utilized to the fullest extent. Agreement would permit the Army to conduct espionage operations to meet those tactical information requirements which are in direct support of the overseas commander's mission and would place CIA in a better position to concentrate on long-range strategic requirements. During 1949 and 1950, G-2, in collaboration with CIA, prepared and issued to the intelligence chiefs of FECOM, USFA and EUCOM, policy letters calling for joint planning and coordination of operations between CIA and these overseas commands. The unified commands have not been officially notified of the recent revision of NSCID #5. It is recommended that appropriate representatives of G-2 and CIA/OSC be appointed to develop a basic agreement between the DCI and the Department of the Army, covering the type and extent of espionage operations the Army may conduct as "agreed activities," either in direct support of an overseas command's mission or in the overall interests of the US Government as the DCI and the G-2 may agree; to develop special agreements for each existing overseas command area; and to develop a mechanism for the centralized control and coordination of US espionage operations both in Washington and in the field which will promote the most effective use of all espionage capabilities and avoid duplication of effort, unwitting multiple use of the same sources, false confirmation and dissipation of available intelligence assets.

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Kirkpatrick, DADSO, recommended to the DCI that this proposal be approved and implemented and that the proposed negotiations be broadened to include representation of the Navy and the Air Force.

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